

FILED

JUL - 9 2013

U.S. COURT OF
FEDERAL CLAIMS

ORIGINAL

UNITED STATES COURT OF FEDERAL CLAIMS

FAIRHOLME FUNDS, INC., on behalf of its
series The Fairholme Fund, THE
FAIRHOLME FUND, a series of Fairholme
Funds, Inc., BERKLEY INSURANCE
COMPANY, ACADIA INSURANCE
COMPANY, ADMIRAL INDEMNITY
COMPANY, ADMIRAL INSURANCE
COMPANY, BERKLEY REGIONAL
INSURANCE COMPANY, CAROLINA
CASUALTY INSURANCE COMPANY,
CONTINENTAL WESTERN INSURANCE
COMPANY, MIDWEST EMPLOYERS
CASUALTY INSURANCE COMPANY,
NAUTILUS INSURANCE COMPANY,
PREFERRED EMPLOYERS INSURANCE
COMPANY,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Case No. **13-465 C**

NOTICE OF DIRECTLY RELATED CASE

Pursuant to Rule of the Court of Federal Claims 40.2, Plaintiffs hereby provides notice of
a directly related case:

- (i) CFC No. 13-385 C (MMS)—*Washington Federal, Michael McCredy Baker, and
City of Austin Police Retirement System, on behalf of themselves and all others
similarly situated v. United States.*
- (ii) Matters qualify as directly related cases under RCFC 40.2(a)(2), when: (A) they
involve the same parties and are based on the same or similar claims; or (B) they

involve the same contract, property, or patent. This matter and *Washington Federal* are directly related under subsection (B), for they involve an alleged taking of the same property arising from the same contract and perpetrated by the same contract. In particular, both cases allege that the Government has taken the value of privately held preferred stock issued by the Federal National Mortgage Association (“Fannie”) and the Federal Home Loan Mortgage Corporation (“Freddie”). Furthermore, both cases allege that a taking was accomplished by the same contract—the August 17, 2012 amendment to Senior Preferred Stock Purchase Agreements between the Federal Housing Finance Agency, acting as conservator for Fannie and Freddie, and the Department of the Treasury. As a result of these common features, this matter and *Washington Federal* are directly related. *See, e.g., ExxonMobil Corp v. United States*, 89 Fed. Cl. 628 (2009) (finding two cases directly related when parties to two separate contracts with the United States shared the same contract provision).

- (iii) Assigning this matter to Judge Sweeney would conserve judicial resources and promote the efficient administration of justice. The *Washington Federal* matter was filed on June 10, 2013, less than a month ago. Since the parties are at similar stages of the litigation, the parties may be able to cooperate on scheduling and discovery, thus allowing the Court to handle the matter on the same track and at the same time.

Date: July 9, 2013

Of counsel:

Vincent J. Colatriano

David H. Thompson

Peter A. Patterson*

**Pro hac vice* application forthcoming

COOPER & KIRK, PLLC

1523 New Hampshire Avenue, N.W.

Washington, D.C. 20036

(202) 220-9600

(202) 220-9601 (fax)

Respectfully submitted,

 by 

Charles J. Cooper

COOPER & KIRK, PLLC

1523 New Hampshire Avenue, N.W.

Washington, D.C. 20036

(202) 220-9600

(202) 220-9601 (fax)

ccooper@cooperkirk.com